



W.P(MD).No.12759 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.12759 of 2012

and

MP(MD).Nos. 1 to 3 of 2012

S.Mahalakshmi

....Petitioner

Vs

1.The Assistant Commissioner
Land Reforms
Murugankuruchi
Thiruvananthapuram Road
Palayamkottai, Tirunelveli

2.P.Maharajan

3.P.Murugan

4.M.Murugan

5.Valliappa

6.Devasahayam

7.The Inspector of Police
Moondradaipuu Police Station
Nanguneri Taluk, Tirunelveli District

8.M.D.K.Shanmuganathan

...Respondents



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Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in his proceedings “C4/MR4/497A/Nanguneir dated 11.06.2007 and quash the same and further direct the first respondent to assign the land in S.No.336/3 to an extent of 3.35 acres out of 12.05 acres situated at Vagaikulam Village, Poolam Part II, Nanguneir Taluk, Tirunelveli District to the petitioner.

For Petitioner	: Mr.T.Selvan
For R1 & R7	: Mr.S.Shanmugavel Additional Government Pleader
For R2	: Mr.A.R.Jeyarhuthran
For R3 to R6	: No appearance
For R8	: Mr.V.R.Shanmuganathan

ORDER

The writ petition has been filed seeking to quash the order passed by the first respondent herein on 11.06.2007 and grant of assignment of land in favour of the writ petitioner.

2. According to the writ petitioner, the land in dispute originally belong to Singikulam Annadhana Chathiram. The petitioner's mother was cultivating the said land. The same was also registered before the Registrar of Tenancy Rights for Agricultural Land on 21.05.1993. After the death of his mother, the petitioner name was referred as a tenant on 01.10.2007.



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3.The learned counsel for the petitioner had contended that the respondents 2 to 6 have attempted to disturb the petitioner's possession in the first weeks of November 2011 and he found that the computerised patta has been issued in the name of the said respondents. On verification, the petitioner came to know that the lands have been acquired without notice and without proper advertisement and the first respondent has assigned the said lands in favour of the respondents 2 to 6. The petitioner has given a representation on 03.12.2011 to cancel the order of assignment in favour of the respondents 2 to 6. Since the petitioner is a cultivating tenant and he is in possession of the same, the first respondent without following the due procedure contemplated under Land Reforms Act ought not to have granted assignment in favour of the respondents 2 to 6. The order under challenge in the writ petition is the order passed under disposal of DSL Rules of Tamil Nadu Lands Reforms Act 1961 under which the order of assignment has been issued in favour of the respondents 2 to 6.

4.The assignees namely the respondents 2 to 6 has filed a counter contending that the lands in dispute along with other lands were declared as surplus under Tamil Nadu Land Reforms Act 1961. After payment of the land value, the same was assigned in favour of the private respondents. After getting an order of assignment, the private respondents contended that they have cultivating the said lands and individual patta has also been granted.



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5.The learned counsel for the private respondents contended that the second respondent had filed O.S.No.112 of 2012 on the file of the Additional District Munsif Court, Nanguneri as against the writ petitioner and others for the relief of declaration of title and permanent injunction. The said suit was decreed on 27.07.2013. No appeal was filed by the writ petitioner. The writ petitioner had filed O.S.No.50 of 2012 as against the second respondent on the file of the Additional District Munsif Court, Nanguneri for the relief of permanent injunction. The said suit was dismissed after trial on 22.04.2014. This judgment and decree was also not challenged by the writ petitioner. Hence, he contended that the order of assignment granted in favour of the private respondents has become final and the civil suit have ended as against the writ petitioner. Hence, he prayed for dismissal of the writ petition.

6.I have considered the submissions made on either side and perused the materials available on record.

7.The petitioner claims to be a cultivating tenant of a property which was declared surplus under Tamil Nadu Act 58 of 1961. According to the writ petitioner, a cultivating tenant has got preferential right of assignment order in his favour. Without proper publication, an order of assignment has been issued in favour of the private respondents 2 to 6.



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8.A perusal of the documents annexed to the writ petitioner and the typed set filed on the side of the second respondent herein reveals that after following due process of law, lands have been declared as surplus and it has been assigned on payment in favour of the respondents 2 to 6 herein on 11.06.2007. However, the writ petition has been filed in the year 2012 challenging the said order of assignment. The second respondent one of the beneficiaries of the assignment has filed a suit for declaration of title and permanent injunction as against the writ petitioner and he has succeeded. The civil suit filed by the writ petitioner as against the second respondent has been dismissed.

9.In view of the decision in both the said civil suits, it is clear that the writ petitioner is not in possession of the disputed property for which he seeks assignment order. A perusal of the records filed on the side of the official respondents will show that they have followed the rules under Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules before granting an order of assignment. The petitioner has not chosen to file any application seeking assignment at that point of time. Hence, the petitioner cannot now contend that his request for Patta was not favourably considered by the official respondents.



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10. Only when the petitioner files an application under Rule 7 of DSL Rule 1965 before the concerned authority seeking assignment of land, the question of granting assignment will arise. The petitioner has also not objected to the notice published in Form-D or participated in the enquiry objecting to the granting of assignment in favour of the third party. That apart, as against the order impugned in the writ petition, an appeal lies to the appellate authority under Rule 10. But in the present case, the petitioner has chosen to file a writ petition to quash the order of assignment even without filing any application seeking assignment in his favour.

11. In view of the above said facts, I do not find any merit in the present writ petition and the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

26 .07.2022

Internet : Yes/No
Index : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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